



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2021-0452; FRL-8834-01-R9]

Air Plan Approval; California; Opacity Testing of Heavy-Duty Diesel Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the California State Implementation Plan (SIP) concerning particulate matter (PM) emissions from heavy-duty (HD) diesel vehicles. We are proposing to approve state rules to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the *Federal Register*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2021-0452 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information

about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947-4152 or by email at buss.jeffrey@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

Table of Contents

- I. The State’s Submittal
 - A. What rules did the State submit?
 - B. Are there other versions of these rules?
 - C. What is the purpose of the submitted rules?
- II. The EPA’s Evaluation and Action
 - A. How is the EPA evaluating the rules?
 - B. Do the rules meet the evaluation criteria?
 - C. The EPA’s recommendations to further improve the rules
 - D. Public comment and proposed action
- III. Incorporation by Reference
- IV. Statutory and Executive Order Reviews

I. The State’s Submittal

A. *What rules did the State submit?*

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the California Air Resources Board (CARB) and submitted to the EPA.

TABLE 1 - SUBMITTED RULES

Agency	Rule #	Rule Title	Amended	Submitted
CARB	Title 13, Division 3, Chapter 3.5	Heavy-Duty Diesel Smoke Emission Testing and Heavy-Duty Vehicle Emission Control System Inspections ¹	07/01/2019	02/13/2020

¹ Chapter 3.5 contains sections 2180-2189.

Agency	Rule #	Rule Title	Amended	Submitted
CARB	Title 13, Division 3, Chapter 3.6	Periodic Smoke Inspections of Heavy-Duty Diesel-Powered Vehicles ²	07/01/2019	02/13/2020

On August 13, 2020, the submittal from CARB was deemed by operation of law to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

There are no previous versions of the submitted rules in the California SIP.

C. What is the purpose of the submitted rules?

Emissions of PM, including PM equal to or less than 2.5 microns in diameter (PM_{2.5}) and PM equal to or less than 10 microns in diameter (PM₁₀), contribute to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to submit regulations that control PM emissions. The EPA's technical support document (TSD) has more information about these rules.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere

² Chapter 3.6 contains sections 2190-2194.

with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Guidance and policy documents that we used to evaluate enforceability, revisions, relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” (a.k.a., Bluebook) EPA OAQPS, May 25, 1988.
2. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” (a.k.a., Little Bluebook), EPA Region 9, August 21, 2001.
3. “Guidance to States on In-Use Smoke Test Procedure for Highway Heavy-Duty Diesel Vehicles,” EPA OAR, April 3, 1997.
4. “Guidance to States on Smoke Opacity Cutpoints to be used with the SAE J1667 In-Use Smoke Test Procedure,” EPA OAR, February 25, 1999.

B. *Do the rules meet the evaluation criteria?*

These rules meet CAA requirements and are consistent with relevant guidance regarding enforceability and SIP revisions. The standards set forth in the rules listed above (referred to as the “heavy-duty vehicle inspection program” (HDVIP) and the “periodic smoke inspection program” (PSIP)) are more stringent than the opacity standards set forth in the EPA’s guidance to states.³ Further, while EPA’s 1999 guidance establishes recommendations for states to uniformly establish opacity standards, states have authority under CAA section 209(d) to establish their own in-use standards for motor vehicles. The TSD has more information on our evaluation.

³ “Guidance to States on Smoke Opacity Cutpoints to be used with the SAE J1667 In-Use Smoke Test Procedure,” EPA OAR, February 25, 1999.

C. *The EPA's recommendations to further improve the rules*

The TSD includes recommendations for the next time CARB modifies the rules.

D. *Public comment and proposed action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rules because they fulfill all relevant requirements. We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the *Federal Register*]**. If we take final action to approve the submitted rules, our final action will incorporate these rules into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the California rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the FOR FURTHER INFORMATION CONTACT section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563

(76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.

In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: October 29, 2021.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

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